

# HOUSE BILL 1088

K4, F1

(11r1944)

## *ENROLLED BILL*

— *Appropriations/Budget and Taxation* —

Introduced by **Delegate Griffith (Chair, Joint Committee on Pensions)**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

### CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Audit Responsibilities – State Department of Education, Maryland Higher**  
3 **Education Commission, and State Retirement Agency**

4 FOR the purpose of requiring the county boards of education to conduct certain audits  
5 under certain circumstances; requiring certain local school systems to  
6 reimburse the State for certain employer contributions for certain employees  
7 participating in the Teachers' Retirement System or the Teachers' Pension  
8 System; providing that the State Department of Education may authorize  
9 certain county boards of education and public libraries to conduct certain  
10 audits; authorizing the State Department of Education, rather than the State  
11 Retirement Agency, to conduct certain audits of local school systems and public  
12 libraries to determine if certain employer contributions have been paid  
13 appropriately to the State Retirement and Pension System; clarifying that  
14 certain audits conducted by certain groups may be conducted in a certain  
15 manner; requiring that reimbursements for certain audits be applied to the

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#### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics* indicate opposite chamber/conference committee amendments.



1 State Department of Education, certain county boards of education, the  
 2 Maryland Higher Education Commission, certain public junior or community  
 3 colleges, certain public libraries, and the General Fund in a certain manner;  
 4 requiring certain county boards of education and public libraries to provide  
 5 certain documentation to the State Department of Education under certain  
 6 circumstances; providing that the Maryland Higher Education Commission may  
 7 authorize certain public junior or community colleges to conduct certain audits;  
 8 authorizing the Maryland Higher Education Commission, rather than the State  
 9 Retirement Agency, to conduct certain audits of public junior or community  
 10 colleges to determine if certain employer contributions have been paid  
 11 appropriately to the State Retirement and Pension System; requiring certain  
 12 public junior or community colleges to provide certain documentation to the  
 13 Maryland Higher Education Commission under certain circumstances;  
 14 clarifying that the State Retirement Agency may perform certain audits of  
 15 certain participating employers; requiring that if certain audits by the State  
 16 Retirement Agency reveal certain information, certain actions shall be taken  
 17 and certain payments shall be made to the State Retirement and Pension  
 18 System; and generally relating to performing audits of local school systems,  
 19 public junior or community colleges, and public libraries for purposes of  
 20 determining if employer and member contributions have been paid  
 21 appropriately to the State Retirement and Pension System.

22 BY repealing and reenacting, with amendments,  
 23 Article – Education  
 24 Section 5–109, 5–203, 16–306, and 23–504  
 25 Annotated Code of Maryland  
 26 (2008 Replacement Volume and 2010 Supplement)

27 BY repealing and reenacting, with amendments,  
 28 Article – State Personnel and Pensions  
 29 Section 21–121  
 30 Annotated Code of Maryland  
 31 (2009 Replacement Volume and 2010 Supplement)

32 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 33 MARYLAND, That the Laws of Maryland read as follows:

34 **Article – Education**

35 5–109.

36 (a) (1) Each county board shall provide for an annual audit of its financial  
 37 transactions and accounts.

38 (2) AT THE REQUEST OF THE DEPARTMENT, A COUNTY BOARD  
 39 SHALL CONDUCT AN AUDIT UNDER § 5–203 OF THIS TITLE.

1 (b) (1) The audit shall be made by a certified public accountant or a  
2 partnership of certified public accountants who are:

3 (i) Licensed by the State Board of Public Accountancy; and

4 (ii) Approved by the State Superintendent.

5 (2) The audit shall be made in accordance with the standards and  
6 regulations adopted by the State Board.

7 (c) (1) The results of the audit, including the letter of recommendation  
8 submitted by the auditor, are a matter of public record.

9 (2) The results shall be reported within 3 months after the close of the  
10 fiscal year for the county board on the form and in the manner required by the State  
11 Board to:

12 (i) The State Superintendent;

13 (ii) The county fiscal authority;

14 (iii) The Joint Audit Committee of the General Assembly;

15 (iv) The Senate Budget and Taxation Committee;

16 (v) The Senate Education, Health, and Environmental Affairs  
17 Committee;

18 (vi) The House Appropriations Committee; and

19 (vii) The House Committee on Ways and Means.

20 (d) In addition to the audit required by this section, the county  
21 commissioners or county council may conduct an audit using auditors employed by the  
22 county.

23 5-203.

24 (a) (1) [In this section, "Agency" means the State Retirement Agency.]  
25 **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A LOCAL SCHOOL SYSTEM**  
26 **SHALL REIMBURSE THE STATE ANNUALLY FOR THE EMPLOYER CONTRIBUTIONS**  
27 **MADE BY THE STATE FOR AN EMPLOYEE WHO:**

1                   **(I) IS A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM**  
2 **OR THE TEACHERS' PENSION SYSTEM UNDER DIVISION II OF THE STATE**  
3 **PERSONNEL AND PENSIONS ARTICLE; AND**

4                   **(II) IS RECEIVING A SALARY FUNDED BY A SOURCE OTHER**  
5 **THAN STATE OR LOCAL AID.**

6                   **(2) TO THE EXTENT THAT AN EMPLOYEE'S SALARY IS FUNDED IN**  
7 **PART BY SOURCES OTHER THAN STATE OR LOCAL AID, THE LOCAL SCHOOL**  
8 **SYSTEM SHALL REIMBURSE THE STATE A PRO RATA SHARE OF THE STATE'S**  
9 **PAYMENT BASED ON THE PERCENTAGE OF THE EMPLOYEE'S SALARY FUNDED BY**  
10 **A SOURCE OTHER THAN STATE OR LOCAL AID.**

11           (b) (1) **[The Agency] TO ENSURE THAT EACH LOCAL SCHOOL SYSTEM**  
12 **IS PROPERLY REIMBURSING THE STATE AS PROVIDED UNDER SUBSECTION (A)**  
13 **OF THIS SECTION, THE DEPARTMENT OR, AT THE DEPARTMENT'S REQUEST, A**  
14 **COUNTY BOARD** may at any time examine the records of local school systems to  
15 determine whether the State's payments for retirement contributions for employees of  
16 the school systems are in accordance with the provisions of Division II of the State  
17 Personnel and Pensions Article.

18                   **[(2) In making the determination under paragraph (1) of this**  
19 **subsection, the Agency shall include as employees eligible for State payment of**  
20 **retirement contributions those employees:**

21                   (i) Whose salaries are funded by State or local aid, whether  
22 general or categorical in nature; and

23                   (ii) Who are members of the Teachers' Pension System or  
24 Teachers' Retirement System.]

25                   **(2) AN AUDIT CONDUCTED UNDER PARAGRAPH (1) OF THIS**  
26 **SUBSECTION MAY BE:**

27                   **(I) INCLUDED WITH AN EXISTING ANNUAL FINANCIAL**  
28 **AUDIT AS A SUPPLEMENTAL PART AND TESTED INDEPENDENTLY;**

29                   **(II) CONDUCTED IN CONJUNCTION WITH A SUPPLEMENTAL**  
30 **FEDERALLY MANDATED SINGLE AUDIT OF FEDERAL FINANCIAL ASSISTANCE**  
31 **PROGRAMS AND TESTED INDEPENDENTLY; OR**

32                   **(III) CONDUCTED AS A SEPARATE INDEPENDENT AUDIT.**

1 (c) (1) (i) If an examination of the records of a local school system  
2 shows that the State has paid more than is required under Division II of the State  
3 Personnel and Pensions Article, within 30 days after the date of the notice to the  
4 school system of the State overpayment, the school system may appeal the notice of  
5 State overpayment to the Secretary of Budget and Management who shall appoint a  
6 hearing examiner who is an attorney.

7 (ii) The hearing examiner shall make recommendations to the  
8 Secretary of Budget and Management who shall make a determination regarding the  
9 amount, if any, of the State overpayment.

10 (iii) Should a local school system request a transcript of an audit  
11 appeals hearing, the local school system shall provide and pay for the production of the  
12 transcript.

13 (2) At the request of the Department [of Education] the moneys owed  
14 shall be deducted from any other State funds that would otherwise be paid to the  
15 school system if:

16 (i) A local school system does not appeal to the Secretary of  
17 Budget and Management or to the Office of Administrative Hearings; or

18 (ii) The Office of Administrative Hearings determines that the  
19 State is due reimbursement for excess payments as provided in paragraph (3) of this  
20 subsection.

21 (3) (i) The local school system may appeal to the Office of  
22 Administrative Hearings a determination by the Secretary of Budget and  
23 Management regarding the amount, if any, of the State overpayment.

24 (ii) Within 45 days after the close of the hearing record, the  
25 Office of Administrative Hearings shall issue a written decision to the parties and may  
26 grant any appropriate remedy.

27 (iii) The written decision issued by the Office of Administrative  
28 Hearings is the final finding of fact and conclusion of law and binding on all parties  
29 and is not subject to judicial review.

30 (d) (1) Any reimbursements [which result from audits under this section]  
31 **UNDER SUBSECTION (A) OF THIS SECTION:**

32 [(1)] (1) Shall be applied first to **THE COST OF ANY AUDIT OR**  
33 **PORTION OF ANY AUDIT RELATING TO SUBSECTION (A) OF THIS SECTION TO**  
34 **reimburse EITHER the [Agency] DEPARTMENT OR THE COUNTY BOARD** for the  
35 expenses of the audits; and

1           **[(2)] (II)** After reimbursement to the [Agency] **DEPARTMENT OR**  
2 **COUNTY BOARD** under item **[(1)](I)** of this [subsection] **PARAGRAPH**, shall be  
3 credited to the General Fund.

4           **(2)** IF AN AUDIT UNDER THIS SECTION IS PERFORMED BY A  
5 COUNTY BOARD, BEFORE THE COUNTY BOARD IS REIMBURSED UNDER  
6 PARAGRAPH **(1)(I)** OF THIS SUBSECTION, THE COUNTY BOARD SHALL PROVIDE  
7 DOCUMENTATION TO THE DEPARTMENT THAT THE INCREMENTAL COSTS OF  
8 THE AUDIT INCURRED BY THE COUNTY BOARD ARE REASONABLE.

9 16-306.

10           (a) **(1)** [In this section, "Agency" means the State Retirement Agency.]  
11 **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PUBLIC JUNIOR OR**  
12 **COMMUNITY COLLEGE SHALL REIMBURSE THE STATE ANNUALLY FOR THE**  
13 **EMPLOYER CONTRIBUTIONS MADE BY THE STATE FOR AN EMPLOYEE WHO:**

14                           **(I)** IS A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM  
15 **OR THE TEACHERS' PENSION SYSTEM UNDER DIVISION II OF THE STATE**  
16 **PERSONNEL AND PENSIONS ARTICLE; AND**

17                           **(II)** IS RECEIVING A SALARY FUNDED BY A SOURCE OTHER  
18 **THAN STATE OR LOCAL AID.**

19           **(2)** TO THE EXTENT THAT AN EMPLOYEE'S SALARY IS FUNDED IN  
20 PART BY SOURCES OTHER THAN STATE OR LOCAL AID, THE PUBLIC JUNIOR OR  
21 COMMUNITY COLLEGE SHALL REIMBURSE THE STATE A PRO RATA SHARE OF  
22 THE STATE'S PAYMENT BASED ON THE PERCENTAGE OF THE EMPLOYEE'S  
23 SALARY FUNDED BY A SOURCE OTHER THAN STATE OR LOCAL AID.

24           (b) **(1)** [The Agency] **TO ENSURE THAT THE PUBLIC JUNIOR OR**  
25 **COMMUNITY COLLEGE IS PROPERLY REIMBURSING THE STATE AS PROVIDED**  
26 **UNDER SUBSECTION (A) OF THIS SECTION, THE COMMISSION OR, AT THE**  
27 **COMMISSION'S REQUEST, A PUBLIC JUNIOR OR COMMUNITY COLLEGE** may at  
28 any time examine the records of public junior or community colleges to determine  
29 whether the State's payments for retirement contributions for employees of the public  
30 junior or community colleges are in accordance with the provisions of Division II of the  
31 State Personnel and Pensions Article.

32                           **(2)** AN AUDIT CONDUCTED UNDER PARAGRAPH **(1)** OF THIS  
33 **SUBSECTION MAY BE:**

34                           **(I)** INCLUDED WITH AN EXISTING FINANCIAL ANNUAL  
35 **AUDIT AS A SUPPLEMENTAL PART AND TESTED INDEPENDENTLY;**

1                   **(II) CONDUCTED IN CONJUNCTION WITH A SUPPLEMENTAL**  
2 **FEDERALLY MANDATED SINGLE AUDIT OF FEDERAL FINANCIAL ASSISTANCE**  
3 **PROGRAMS AND TESTED INDEPENDENTLY; OR**

4                   **(III) CONDUCTED AS A SEPARATE INDEPENDENT AUDIT.**

5           (c)   (1)   (i)   If an examination of the records of a public junior or  
6 community college shows that the State has paid more than is required under Division  
7 II of the State Personnel and Pensions Article, within 30 days after the date of the  
8 notice to the junior or community college of the State overpayment, the junior or  
9 community college may appeal the notice of State overpayment to the Secretary of  
10 Budget and Management who shall appoint a hearing examiner.

11                   (ii)   The hearing examiner shall make recommendations to the  
12 Secretary of Budget and Management who shall make a final determination regarding  
13 the amount, if any, of the State overpayment.

14           (2)   If a public junior or community college does not appeal to the  
15 Secretary of Budget and Management or if the Secretary of Budget and Management  
16 determines that the State is due reimbursement for excess payments, as provided in  
17 paragraph (1) of this subsection, at the request of the [Agency] COMMISSION the  
18 moneys owed shall be deducted from any other State funds that would otherwise be  
19 paid to the public junior or community college.

20           (3)   For purposes of the Administrative Procedure Act, an appeal taken  
21 under this section is not a contested case.

22           (d)   **(1) Any reimbursements [which result from audits under this section]**  
23 **UNDER SUBSECTION (A) OF THIS SECTION:**

24                   **[(1)] (I) Shall be applied first to THE COST OF ANY AUDIT OR**  
25 **PORTION OF ANY AUDIT RELATING TO SUBSECTION (A) OF THIS SECTION TO**  
26 **reimburse EITHER the [Agency] COMMISSION OR THE PUBLIC JUNIOR OR**  
27 **COMMUNITY COLLEGE for the expenses of the audits; and**

28                   **[(2)] (II) After reimbursement to the [Agency] COMMISSION OR THE**  
29 **PUBLIC JUNIOR OR COMMUNITY COLLEGE under item [(1)](I) of this [subsection]**  
30 **PARAGRAPH, shall be credited to the General Fund.**

31           **(2) IF AN AUDIT UNDER THIS SECTION IS PERFORMED BY A**  
32 **PUBLIC JUNIOR OR COMMUNITY COLLEGE, BEFORE THE PUBLIC JUNIOR OR**  
33 **COMMUNITY COLLEGE IS REIMBURSED UNDER PARAGRAPH (1)(I) OF THIS**  
34 **SUBSECTION, THE PUBLIC JUNIOR OR COMMUNITY COLLEGE SHALL PROVIDE**  
35 **DOCUMENTATION TO THE COMMISSION THAT THE INCREMENTAL COSTS OF THE**

1 AUDIT INCURRED BY THE PUBLIC JUNIOR OR COMMUNITY COLLEGE ARE  
2 REASONABLE.

3 23-504.

4 (a) (1) [In this section, "Agency" means the State Retirement Agency.]  
5 SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PUBLIC LIBRARY SHALL  
6 REIMBURSE THE STATE ANNUALLY FOR THE EMPLOYER CONTRIBUTIONS MADE  
7 BY THE STATE FOR AN EMPLOYEE WHO:

8 (I) IS A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM  
9 OR THE TEACHERS' PENSION SYSTEM UNDER DIVISION II OF THE STATE  
10 PERSONNEL AND PENSIONS ARTICLE; AND

11 (II) IS RECEIVING A SALARY FUNDED BY A SOURCE OTHER  
12 THAN STATE OR LOCAL AID.

13 (2) TO THE EXTENT THAT AN EMPLOYEE'S SALARY IS FUNDED IN  
14 PART BY SOURCES OTHER THAN STATE OR LOCAL AID, THE PUBLIC LIBRARY  
15 SHALL REIMBURSE THE STATE A PRO RATA SHARE OF THE STATE'S PAYMENT  
16 BASED ON THE PERCENTAGE OF THE EMPLOYEE'S SALARY FUNDED BY A  
17 SOURCE OTHER THAN STATE OR LOCAL AID.

18 (b) (1) [The Agency] TO ENSURE THAT EACH PUBLIC LIBRARY IS  
19 PROPERLY REIMBURSING THE STATE AS PROVIDED UNDER SUBSECTION (A) OF  
20 THIS SECTION, THE DEPARTMENT OR, AT THE DEPARTMENT'S REQUEST, A  
21 PUBLIC LIBRARY may at any time examine the records of public libraries to  
22 determine whether the State's payments for retirement contributions for employees of  
23 the public libraries are in accordance with the provisions of Division II of the State  
24 Personnel and Pensions Article.

25 (2) AN AUDIT CONDUCTED UNDER PARAGRAPH (1) OF THIS  
26 SUBSECTION MAY BE:

27 (I) INCLUDED WITH AN EXISTING FINANCIAL ANNUAL  
28 AUDIT AS A SUPPLEMENTAL PART AND TESTED INDEPENDENTLY;

29 (II) CONDUCTED IN CONJUNCTION WITH A SUPPLEMENTAL  
30 FEDERALLY MANDATED SINGLE AUDIT OF FEDERAL FINANCIAL ASSISTANCE  
31 PROGRAMS AND TESTED INDEPENDENTLY; OR

32 (III) CONDUCTED AS A SEPARATE INDEPENDENT AUDIT.

1 (c) (1) (i) If an examination of the records of a public library shows  
2 that the State has paid more than is required under Division II of the State Personnel  
3 and Pensions Article, within 30 days after the date of the notice to the library of the  
4 State overpayment, the public library may appeal the notice of State overpayment to  
5 the Secretary of Budget and Management who shall appoint a hearing examiner.

6 (ii) The hearing examiner shall make recommendations to the  
7 Secretary of Budget and Management who shall make a final determination regarding  
8 the amount, if any, of the State overpayment.

9 (2) If a public library does not appeal to the Secretary of Budget and  
10 Management or if the Secretary of Budget and Management determines that the State  
11 is due reimbursement for excess payments as provided in paragraph (1) of this  
12 subsection, at the request of the Department of ~~Education~~ the moneys owed shall be  
13 deducted from any other State funds that would otherwise be paid to the public  
14 library.

15 (3) For purposes of the Administrative Procedure Act, an appeal taken  
16 under this section is not a contested case.

17 (d) (1) Any reimbursements [which result from audits under this section]  
18 **UNDER SUBSECTION (A) OF THIS SECTION:**

19 [(1)] (I) Shall be applied first to **THE COST OF ANY AUDIT OR**  
20 **PORTION OF ANY AUDIT RELATING TO SUBSECTION (A) OF THIS SECTION TO**  
21 reimburse **EITHER** the [Agency] **DEPARTMENT OR THE PUBLIC LIBRARY** for the  
22 expenses of the audits; and

23 [(2)] (II) After reimbursement to the [Agency]**DEPARTMENT OR**  
24 **PUBLIC LIBRARY** under item [(1)](I) of this [subsection] **PARAGRAPH**, shall be  
25 credited to the General Fund.

26 (2) **IF AN AUDIT UNDER THIS SECTION IS PERFORMED BY A**  
27 **PUBLIC LIBRARY, BEFORE THE PUBLIC LIBRARY IS REIMBURSED UNDER**  
28 **PARAGRAPH (1)(I) OF THIS SUBSECTION, THE PUBLIC LIBRARY SHALL PROVIDE**  
29 **DOCUMENTATION TO THE DEPARTMENT THAT THE INCREMENTAL COSTS OF**  
30 **THE AUDIT INCURRED BY THE PUBLIC LIBRARY ARE REASONABLE.**

31 **Article – State Personnel and Pensions**

32 21–121.

33 (A) [Whenever an audit of the records of an educational institution, public  
34 library, or school system reveals that the institution, library, or school system owes  
35 money to the accumulation fund of the Teachers' Retirement System or the Teachers'  
36 Pension System, the State Retirement Agency may collect the delinquent payment as

1 provided under §§ 5–203, 16–306, and 23–504 of the Education Article.]**THE STATE**  
 2 **RETIREMENT AGENCY MAY AT ANY TIME EXAMINE THE RECORDS OF A**  
 3 **PARTICIPATING EMPLOYER TO DETERMINE WHETHER THE PAYMENT OF**  
 4 **BENEFITS TO A PARTICIPANT AND THE PAYMENT OF CONTRIBUTIONS BY A**  
 5 **PARTICIPATING EMPLOYER OR PARTICIPANT ARE AND WILL BE IN ACCORDANCE**  
 6 **WITH THE PROVISIONS OF DIVISION II OF THIS ARTICLE.**

7 **(B) WHENEVER AN AUDIT REVEALS THAT THE PAYMENT OF BENEFITS**  
 8 **TO A PARTICIPANT OR THE PAYMENT OF CONTRIBUTIONS BY A PARTICIPATING**  
 9 **EMPLOYER OR PARTICIPANT IS NOT IN ACCORDANCE WITH THE PROVISIONS OF**  
 10 **DIVISION II OF THIS ARTICLE:**

11 **(1) THE STATE RETIREMENT AGENCY AND PARTICIPATING**  
 12 **EMPLOYER SHALL CORRECT THEIR RECORDS; AND**

13 **(2) (I) THE PARTICIPATING EMPLOYER SHALL PAY ANY**  
 14 **AMOUNTS OWED TO THE ACCUMULATION FUND OF THE APPROPRIATE STATE**  
 15 **SYSTEM; AND**

16 **(II) THE MEMBER CONTRIBUTIONS OWED BY THE**  
 17 **PARTICIPANT SHALL BE MADE BY THE PARTICIPANT IN ACCORDANCE WITH §**  
 18 **21–312(E) OF THIS TITLE.**

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
 20 July 1, 2011.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.